

**2009 DRAFTING REQUEST**

**Bill**

Received: **04/13/2010**

Received By: **gmalaise**

Wanted: **Today**

Companion to LRB:

For: **Scott Fitzgerald (608) 266-5660**

By/Representing: **Tad Ottman**

May Contact:

Drafter: **gmalaise**

Subject: **Employ Priv - prevailing wage**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Fitzgerald@legis.wisconsin.gov**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Prevailing wage; restoration of prior law

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**Instructions:**

See attached--draft companion to AB 829

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 04/13/2010	nnatzke 04/13/2010		_____			S&L
/1			rschluet 04/13/2010	_____	sbasford 04/13/2010	sbasford 04/14/2010	

FE Sent For:

<END>

↳ At Intro.

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gmalaise

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4/13

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FE Sent For:

<END>

**Malaise, Gordon**

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**From:** Ottman, Tad  
**Sent:** Tuesday, April 13, 2010 12:02 PM  
**To:** Malaise, Gordon  
**Subject:** Drafting request

Senator Fitzgerald would like a Senate version drafted of Assembly Bill 829, repealing the prevailing wage law changes.

Please let me know if you have any questions.

Thanks,

Tad Ottman  
Chief of Staff  
Senator Scott Fitzgerald  
608-266-5660  
tad.ottman@legis.wi.gov

04/13/2010



# State of Wisconsin

2009 - 2010 LEGISLATURE

En 4113

Today - Companion - No change

SENATE

## 2009 ASSEMBLY BILL 829

-4681 / 1

LRB-420111

GMM:nwn:md

SAI  
March 11, 2010 - Introduced by Representatives M. WILLIAMS, NASS, NYGREN, SUDER, KESTELL, MURSAU, MEYER, GOTTLIEB, DAVIS, ZIPPERER, PRIDEMORE, KERKMAN, SPANBAUER, TAUCHEN, LOTHIAN, A. OTT, MONTGOMERY, KLEEFISCH, KNODL, LEMAHIEU, HUEBSCH, VAN ROY, HONADEL, RIPP, ROTH, BROOKS, MURTHA, BIES, GUNDERSON, J. OTT, VOS, RHOADES, PETERSEN, STRACHOTA, BALLWEG, PETROWSKI, NERISON, TOWNSEND, NEWCOMER, FRISKE, KRAMER, GUNDRUM, VUKMIR, J. FITZGERALD and ZIEGELBAUER, cosponsored by Senators DARLING, KEDZIE, GROTHMAN, COWLES, SCHULTZ, OLSEN, LAZICH, A. LASEE, KAPANKE, HOPPER, LEIBHAM, S. FITZGERALD and KANAVAS. Referred to Committee on Workforce Development.

Regen.

1 AN ACT *to repeal* 66.0903 (1) (am), 66.0903 (1) (dr), 66.0903 (1) (im), 66.0903 (2),  
2 66.0903 (5) (b), 66.0903 (5) (c), 66.0903 (10) (am), 66.0903 (11) (a) 2., 66.0904,  
3 103.49 (1) (am), 103.49 (1) (bj), 103.49 (1) (fm), 103.49 (1m), 103.49 (3g) (b),  
4 103.49 (3g) (c), 103.49 (5) (am), 103.49 (6m) (ag) and 104.001 (3) (am); *to*  
5 *consolidate, renumber and amend* 66.0903 (5) (intro.) and (a), 66.0903 (11)  
6 (a) 1., 3. and 5. and 103.49 (3g) (intro.) and (a); *to amend* 19.36 (12), 66.0903  
7 (1) (d), 66.0903 (3) (am), 66.0903 (3) (av), 66.0903 (3) (dm), 66.0903 (10) (c),  
8 103.49 (2), 103.49 (3) (ar), 103.49 (5) (c), 103.50 (4m), 103.503 (title), 103.503 (1)  
9 (a), 103.503 (1) (c), 103.503 (1) (e), 103.503 (1) (g), 103.503 (2), 103.503 (3) (a)  
10 2., 109.09 (1), 111.322 (2m) (c), 227.01 (13) (t), 946.15 (title), 946.15 (1), 946.15  
11 (2), 946.15 (3) and 946.15 (4); and *to create* 66.0903 (1) (em), 66.0903 (1) (hm),  
12 103.49 (1) (br) and 103.49 (1) (em) of the statutes; *relating to:* applicability of  
13 the prevailing wage law to publicly funded private construction projects and to  
14 regional transit authorities, the threshold for applicability of that law to a

**ASSEMBLY BILL 829**

1 project of public works, the submission to the Department of Workforce  
2 Development of payroll records of persons performing work that is subject to  
3 that law, the inspection of those records, and the remedies for a violation of that  
4 law.

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***Analysis by the Legislative Reference Bureau***

Under the current prevailing wage law, certain laborers, workers, mechanics, and truck drivers employed on a state or local project of public works must be paid at the rate paid for a majority of the hours worked in the person's trade or occupation in the county in which the project is located, as determined by the Department of Workforce Development (DWD), and may not be required or permitted to work a greater number of hours per day and per week than the prevailing hours of labor, that is, no more than ten hours per day and 40 hours per week, unless they are paid 1.5 times their basic rate of pay (overtime pay) for all hours worked in excess of the prevailing hours of labor.

2009 Wisconsin Act 28 made various changes to the prevailing wage law, including: 1) expanding the applicability of that law to cover publicly funded private construction projects and projects of public works contracted by regional transit authorities; 2) lowering the threshold for applicability of that law to a project of public works; 3) requiring contractors to submit payroll records to DWD; 4) requiring DWD to charge a requester for the cost of inspecting payroll records only if the request is frivolous; and 5) permitting DWD to order back pay and liquidated damages for a violation of that law. This bill eliminates those changes, thereby restoring prior law.

Specifically:

1. ***Publicly funded private construction projects and regional transit authorities.*** 2009 Wisconsin Act 28 expanded the applicability of the prevailing wage law to cover publicly funded private construction projects that receive \$1,000,000 or more in direct financial assistance from a local governmental unit. Under prior law, only projects of public works contracted for by the state or a local governmental unit were subject to the prevailing wage law. This bill eliminates coverage of publicly funded private construction projects under the prevailing wage law, so that under the bill only projects of public works are covered under the prevailing wage law.

2009 Wisconsin Act 28 expanded the definition of "local governmental unit" for purposes of applicability of the prevailing wage law to projects of public works to include regional transit authorities. This bill deletes the inclusion of regional transit authorities in that definition.

2. ***Threshold for applicability to public works projects.*** 2009 Wisconsin Act 28 lowered the threshold for applicability of the prevailing wage law to a project of public works so that a project of public works for which the estimated project cost

**ASSEMBLY BILL 829**

of completion is below \$25,000 is not subject to that law. The act also eliminated the authority of DWD to adjust that threshold based on changes in construction costs. Under prior law, that threshold was \$234,000 for a multiple-trade project of public works and \$48,000 for a single-trade project of public works and DWD was authorized to adjust those amounts annually based on changes on construction costs. This bill restores those thresholds and that authority.

3. ***Submission of payroll records.*** 2009 Wisconsin Act 28 required contractors performing work on a project of public works or a publicly funded private construction project that is subject to the prevailing wage law to submit to DWD on a monthly basis, in electronic format, certified records indicating the name and trade or occupation of every person performing work that is subject to the prevailing wage law and an accurate record of the number of hours worked by each of those persons and the actual wages paid for those hours worked (payroll records) or, if all persons performing work on the project are covered under a collective bargaining agreement that provides for wage rates that are not less than the prevailing wage rate, to submit to DWD during the first month of the project, in electronic format, copies of all collective bargaining agreements pertaining to the project. This bill eliminates that requirement.

4. ***Inspection of payroll records.*** 2009 Wisconsin Act 28 required DWD to charge a person who requests DWD to inspect a contractor's payroll records for the purpose of ensuring compliance with the prevailing wage law the actual cost of the inspection if the contractor is found to be in compliance with that law and if the request is found to be frivolous. Prior law required DWD to charge that cost if the contractor was found to be in compliance with the prevailing wage law, but did not require the additional finding that the request was frivolous. This bill eliminates that additional finding so that under the bill DWD must charge for the cost of inspecting a contractor's payroll records if the contractor is found to be in compliance with the prevailing wage law, whether or not the request is frivolous.

5. ***Remedies for a violation of the prevailing wage law.*** 2009 Wisconsin Act 28 permitted DWD to order a contractor who failed to pay the prevailing wage rate to pay to any affected employee the amount of unpaid wages due, plus 100 percent of that amount as liquidated damages. Prior law permitted only a court to order that payment. This bill eliminates the authority of DWD to order that payment so that under the bill only a court may order that payment.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 19.36 (12) of the statutes, as affected by 2009 Wisconsin Act 28, is  
2           amended to read:

**ASSEMBLY BILL 829****SECTION 1**

1           **19.36 (12)** INFORMATION RELATING TO CERTAIN EMPLOYEES. Unless access is  
2 specifically authorized or required by statute, an authority shall not provide access  
3 to a record prepared or provided by an employer performing work on a project to  
4 which s. 66.0903, ~~66.0904~~, 103.49, or 103.50 applies, or on which the employer is  
5 otherwise required to pay prevailing wages, if that record contains the name or other  
6 personally identifiable information relating to an employee of that employer, unless  
7 the employee authorizes the authority to provide access to that information. In this  
8 subsection, “personally identifiable information” does not include an employee’s  
9 work classification, hours of work, or wage or benefit payments received for work on  
10 such a project.

11           **SECTION 2.** 66.0903 (1) (am) of the statutes, as created by 2009 Wisconsin Act  
12 28, is repealed.

13           **SECTION 3.** 66.0903 (1) (d) of the statutes, as affected by 2009 Wisconsin Act 28,  
14 is amended to read:

15           66.0903 (1) (d) “Local governmental unit” means a political subdivision of this  
16 state, a special purpose district in this state, an instrumentality or corporation of  
17 such a political subdivision or special purpose district, a combination or subunit of  
18 any of the foregoing or an instrumentality of the state and any of the foregoing.  
19 ~~“Local governmental unit” includes a regional transit authority created under s.~~  
20 ~~66.1039 and the southeastern regional transit authority created under s. 59.58 (7).~~

21           **SECTION 4.** 66.0903 (1) (dr) of the statutes, as created by 2009 Wisconsin Act  
22 28, is repealed.

23           **SECTION 5.** 66.0903 (1) (em) of the statutes is created to read:

24           66.0903 (1) (em) “Multiple-trade project of public works” has the meaning  
25 given in s. 103.49 (1) (br).



**ASSEMBLY BILL 829**

1           **SECTION 6.** 66.0903 (1) (hm) of the statutes is created to read:

2           66.0903 (1) (hm) “Single-trade project of public works” has the meaning given  
3           in s. 103.49 (1) (em).

4           **SECTION 7.** 66.0903 (1) (im) of the statutes, as created by 2009 Wisconsin Act  
5           28, is repealed.

6           **SECTION 8.** 66.0903 (2) of the statutes, as created by 2009 Wisconsin Act 28, is  
7           repealed.

8           **SECTION 9.** 66.0903 (3) (am) of the statutes, as affected by 2009 Wisconsin Act  
9           28, is amended to read:

10           66.0903 (3) (am) A local governmental unit, before making a contract by direct  
11           negotiation or soliciting bids on a contract for the erection, construction, remodeling,  
12           repairing, or demolition of any project of public works, including a highway, street,  
13           or bridge construction project, shall apply to the department to determine the  
14           prevailing wage rate for each trade or occupation required in the work contemplated.  
15           The department shall conduct investigations and hold public hearings as necessary  
16           to define the trades or occupations that are commonly employed on projects of public  
17           works that are subject to this section and to inform itself as to the prevailing wage  
18           rates in all areas of the state for those trades or occupations, in order to determine  
19           the prevailing wage rate for each trade or occupation. The department shall issue  
20           its determination within 30 days after receiving the request and shall file the  
21           determination with the requesting local governmental unit.

22           **SECTION 10.** 66.0903 (3) (av) of the statutes, as affected by 2009 Wisconsin Act  
23           28, is amended to read:

24           66.0903 (3) (av) In determining prevailing wage rates under par. (am) or (ar),  
25           the department may not use data from projects that are subject to this section, s.

**ASSEMBLY BILL 829****SECTION 10**

1 ~~66.0904~~, 103.49, or 103.50, or 40 USC 3142 unless the department determines that  
2 there is insufficient wage data in the area to determine those prevailing wage rates,  
3 in which case the department may use data from projects that are subject to this  
4 section, s. ~~66.0904~~, 103.49, or 103.50, or 40 USC 3142.

5 **SECTION 11.** 66.0903 (3) (dm) of the statutes, as affected by 2009 Wisconsin Act  
6 28, is amended to read:

7 66.0903 (3) (dm) A reference to the prevailing wage rates determined by the  
8 department or a local governmental unit exempted under sub. (6) and to the  
9 prevailing hours of labor shall be published in the notice issued for the purpose of  
10 securing bids for the project of public works. If any contract or subcontract for a  
11 project of public works, including a highway, street, or bridge construction project,  
12 is entered into, the prevailing wage rates determined by the department or exempted  
13 local governmental unit and the prevailing hours of labor shall be physically  
14 incorporated into and made a part of the contract or subcontract, except that for a  
15 minor subcontract, as determined by the department, the department shall  
16 prescribe by rule the method of notifying the minor subcontractor of the prevailing  
17 wage rates and prevailing hours of labor applicable to the minor subcontract. The  
18 prevailing wage rates and prevailing hours of labor applicable to a contract or  
19 subcontract may not be changed during the time that the contract or subcontract is  
20 in force. No person performing the work described in sub. (4) may be paid less than  
21 the prevailing wage rate in the same or most similar trade or occupation determined  
22 under this subsection; nor may he or she be permitted to work a greater number of  
23 hours per day or per week than the prevailing hours of labor, unless he or she is paid  
24 for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5  
25 times his or her hourly basic rate of pay.

**ASSEMBLY BILL 829**

1           **SECTION 12.** 66.0903 (5) (intro.) and (a) of the statutes, as affected by 2009  
2       Wisconsin Act 28, are consolidated, renumbered 66.0903 (5) and amended to read:

3           66.0903 (5) NONAPPLICABILITY. This section does not apply to any ~~of the~~  
4       ~~following: (a) A single-trade project of public works, including a highway, street, or~~  
5       ~~bridge construction project for which the estimated project cost of completion is below~~  
6       ~~\$25,000 \$48,000 or an amount determined by the department under this subsection~~  
7       ~~or to any multiple-trade project of public works, including a highway, street, or~~  
8       ~~bridge construction project, for which the estimated project cost of completion is~~  
9       ~~below \$234,000 or an amount determined by the department under this subsection.~~  
10       ~~The department shall adjust those dollar amounts every year, the first adjustment~~  
11       ~~to be made not sooner than December 1, 2010. The adjustments shall be in~~  
12       ~~proportion to any change in construction costs since the effective date of the dollar~~  
13       ~~amounts established under this subsection.~~

14           **SECTION 13.** 66.0903 (5) (b) of the statutes, as created by 2009 Wisconsin Act  
15       28, is repealed.

16           **SECTION 14.** 66.0903 (5) (c) of the statutes, as created by 2009 Wisconsin Act  
17       28, is repealed.

18           **SECTION 15.** 66.0903 (10) (am) of the statutes, as created by 2009 Wisconsin Act  
19       28, is repealed.

20           **SECTION 16.** 66.0903 (10) (c) of the statutes, as affected by 2009 Wisconsin Act  
21       28, is amended to read:

22           66.0903 (10) (c) If requested by any person, the department shall inspect the  
23       payroll records of any contractor, subcontractor, or agent performing work on a  
24       project of public works that is subject to this section to ensure compliance with this  
25       section. In the case of a request made by a person performing the work specified in

**ASSEMBLY BILL 829****SECTION 16**

1 sub. (4), if the department finds that the contractor, subcontractor, or agent subject  
2 to the inspection is in compliance ~~and that the request is frivolous~~, the department  
3 shall charge the person making the request the actual cost of the inspection. In the  
4 case of a request made by a person not performing the work specified in sub. (4), if  
5 the department finds that the contractor, subcontractor, or agent subject to the  
6 inspection is in compliance ~~and that the request is frivolous~~, the department shall  
7 charge the person making the request \$250 or the actual cost of the inspection,  
8 whichever is greater. ~~In order to find that a request is frivolous, the department must~~  
9 ~~find that the person making the request made the request in bad faith, solely for the~~  
10 ~~purpose of harassing or maliciously injuring the contractor, subcontractor, or agent~~  
11 ~~subject to the inspection, or that the person making the request knew, or should have~~  
12 ~~known, that there was no reasonable basis for believing that a violation of this~~  
13 ~~section had been committed.~~

14 **SECTION 17.** 66.0903 (11) (a) 1., 3. and 5. of the statutes, as affected by 2009  
15 Wisconsin Act 28, are consolidated, renumbered 66.0903 (11) (a) and amended to  
16 read:

17 66.0903 (11) (a) Any contractor, subcontractor, or contractor's or  
18 subcontractor's agent who fails to pay the prevailing wage rate determined by the  
19 department under sub. (3) or who pays less than 1.5 times the hourly basic rate of  
20 pay for all hours worked in excess of the prevailing hours of labor is liable to any  
21 affected employee in the amount of his or her unpaid wages or his or her unpaid  
22 overtime compensation and in an additional amount as liquidated damages as  
23 ~~provided under subd. 2., 3., whichever is applicable. 3. In addition to or in lieu of~~  
24 ~~recovering the liability specified in subd. 1. as provided in subd. 2., any. An action~~  
25 to recover the liability may be maintained in any court of competent jurisdiction by

**ASSEMBLY BILL 829**

1     ~~any~~ employee for and in behalf of that employee and other employees similarly  
2     situated ~~may commence an action to recover that liability in any court of competent~~  
3     jurisdiction. ~~If the court finds that a contractor, subcontractor, or contractor's or~~  
4     subcontractor's agent has failed to pay the prevailing wage rate determined by the  
5     department under sub. (3) or has paid less than 1.5 times the hourly basic rate of pay  
6     for all hours worked in excess of the prevailing hours of labor, the court shall order  
7     the contractor, subcontractor, or agent to pay to any affected employee the amount  
8     of his or her unpaid wages or his or her unpaid overtime compensation and an  
9     additional amount equal to 100 percent of the amount of those unpaid wages or that  
10    unpaid overtime compensation as liquidated damages. ~~5.~~ No employee may be a  
11    party plaintiff to an the action under ~~subd. 3.~~ unless the employee consents in writing  
12    to become a party and the consent is filed in the court in which the action is brought.  
13    Notwithstanding s. 814.04 (1), the court shall, in addition to any judgment awarded  
14    to the plaintiff, allow reasonable attorney fees and costs to be paid by the defendant.

15       **SECTION 18.** 66.0903 (11) (a) 2. of the statutes, as created by 2009 Wisconsin  
16    Act 28, is repealed.

17       **SECTION 19.** 66.0904 of the statutes, as created by 2009 Wisconsin Act 28, is  
18    repealed.

19       **SECTION 20.** 103.49 (1) (am) of the statutes, as created by 2009 Wisconsin Act  
20    28, is repealed.

21       **SECTION 21.** 103.49 (1) (bj) of the statutes, as created by 2009 Wisconsin Act  
22    28, is repealed.

23       **SECTION 22.** 103.49 (1) (br) of the statutes is created to read:

**ASSEMBLY BILL 829****SECTION 22**

1           103.49 (1) (br) “Multiple-trade project of public works” means a project of  
2 public works in which no single trade accounts for 85 percent or more of the total  
3 labor cost of the project.

4           **SECTION 23.** 103.49 (1) (em) of the statutes is created to read:

5           103.49 (1) (em) “Single-trade project of public works” means a project of public  
6 works in which a single trade accounts for 85 percent or more of the total labor cost  
7 of the project.

8           **SECTION 24.** 103.49 (1) (fm) of the statutes, as created by 2009 Wisconsin Act  
9 28, is repealed.

10          **SECTION 25.** 103.49 (1m) of the statutes, as created by 2009 Wisconsin Act 28,  
11 is repealed.

12          **SECTION 26.** 103.49 (2) of the statutes, as affected by 2009 Wisconsin Act 28,  
13 is amended to read:

14          103.49 (2) PREVAILING WAGE RATES AND HOURS OF LABOR. Any contract made for  
15 the erection, construction, remodeling, repairing, or demolition of any project of  
16 public works to which the state or any state agency is a party, except a contract for  
17 the construction or maintenance of a public highway, street, or bridge, shall contain  
18 a stipulation that no person performing the work described in sub. (2m) may be  
19 permitted to work a greater number of hours per day or per week than the prevailing  
20 hours of labor, except that any such person may be permitted or required to work  
21 more than such prevailing hours of labor per day and per week if he or she is paid  
22 for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5  
23 times his or her hourly basic rate of pay; nor may he or she be paid less than the  
24 prevailing wage rate determined under sub. (3) in the same or most similar trade or  
25 occupation in the area in which the project of public works is situated. A reference

**ASSEMBLY BILL 829**

1 to the prevailing wage rates determined under sub. (3) and the prevailing hours of  
2 labor shall be published in the notice issued for the purpose of securing bids for the  
3 project. If any contract or subcontract for a project of public works that is subject to  
4 this section is entered into, the prevailing wage rates determined under sub. (3) and  
5 the prevailing hours of labor shall be physically incorporated into and made a part  
6 of the contract or subcontract, except that for a minor subcontract, as determined by  
7 the department, the department shall prescribe by rule the method of notifying the  
8 minor subcontractor of the prevailing wage rates and prevailing hours of labor  
9 applicable to the minor subcontract. The prevailing wage rates and prevailing hours  
10 of labor applicable to a contract or subcontract may not be changed during the time  
11 that the contract or subcontract is in force.

12 **SECTION 27.** 103.49 (3) (ar) of the statutes, as affected by 2009 Wisconsin Act  
13 28, is amended to read:

14 103.49 (3) (ar) In determining prevailing wage rates under par. (a) or (am), the  
15 department may not use data from projects that are subject to this section, s. 66.0903,  
16 ~~66.0904~~, 103.50, or 229.8275, or 40 USC 3142 unless the department determines that  
17 there is insufficient wage data in the area to determine those prevailing wage rates,  
18 in which case the department may use data from projects that are subject to this  
19 section, s. 66.0903, ~~66.0904~~, 103.50, or 229.8275, or 40 USC 3142.

20 **SECTION 28.** 103.49 (3g) (intro.) and (a) of the statutes, as affected by 2009  
21 Wisconsin Act 28, are consolidated, renumbered 103.49 (3g) and amended to read:

22 103.49 (3g) NONAPPLICABILITY. This section does not apply to any of the  
23 following: (a) A single-trade project of public works for which the estimated project  
24 cost of completion is less than \$25,000 \$48,000 or an amount determined by the  
25 department under s. 66.0903 (5) or to any multiple-trade project of public works for

**ASSEMBLY BILL 829****SECTION 28**

1 which the estimated project cost of completion is less than \$234,000 or an amount  
2 determined by the department under s. 66.0903 (5).

3       **SECTION 29.** 103.49 (3g) (b) of the statutes, as created by 2009 Wisconsin Act  
4 28, is repealed.

5       **SECTION 30.** 103.49 (3g) (c) of the statutes, as created by 2009 Wisconsin Act  
6 28, is repealed.

7       **SECTION 31.** 103.49 (5) (am) of the statutes, as created by 2009 Wisconsin Act  
8 28, is repealed.

9       **SECTION 32.** 103.49 (5) (c) of the statutes, as affected by 2009 Wisconsin Act 28,  
10 is amended to read:

11       103.49 (5) (c) If requested by any person, the department shall inspect the  
12 payroll records of any contractor, subcontractor, or agent performing work on a  
13 project of public works that is subject to this section to ensure compliance with this  
14 section. In the case of a request made by a person performing the work specified in  
15 sub. (2m), if the department finds that the contractor, subcontractor, or agent subject  
16 to the inspection is in compliance ~~and that the request is frivolous~~, the department  
17 shall charge the person making the request the actual cost of the inspection. In the  
18 case of a request made by a person not performing the work specified in sub. (2m),  
19 if the department finds that the contractor, subcontractor, or agent subject to the  
20 inspection is in compliance ~~and that the request is frivolous~~, the department shall  
21 charge the person making the request \$250 or the actual cost of the inspection,  
22 whichever is greater. ~~In order to find that a request is frivolous, the department must~~  
23 ~~find that the person making the request made the request in bad faith, solely for the~~  
24 ~~purpose of harassing or maliciously injuring the contractor, subcontractor, or agent~~  
25 ~~subject to the inspection, or that the person making the request knew, or should have~~



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1 ~~known, that there was no reasonable basis for believing that a violation of this~~  
2 ~~section had been committed.~~

3 **SECTION 33.** 103.49 (6m) (ag) of the statutes, as created by 2009 Wisconsin Act  
4 28, is repealed.

5 **SECTION 34.** 103.50 (4m) of the statutes, as affected by 2009 Wisconsin Act 28,  
6 is amended to read:

7 **103.50 (4m) WAGE RATE DATA.** In determining prevailing wage rates for projects  
8 that are subject to this section, the department shall use data from projects that are  
9 subject to this section, s. 66.0903, ~~66.0904~~, or 103.49, or 40 USC 3142.

10 **SECTION 35.** 103.503 (title) of the statutes, as affected by 2009 Wisconsin Act  
11 28, is amended to read:

12 **103.503 (title) Substance abuse prevention on public works and**  
13 **publicly funded projects.**

14 **SECTION 36.** 103.503 (1) (a) of the statutes, as affected by 2009 Wisconsin Act  
15 28, is amended to read:

16 **103.503 (1) (a)** “Accident” means an incident caused, contributed to, or  
17 otherwise involving an employee that resulted or could have resulted in death,  
18 personal injury, or property damage and that occurred while the employee was  
19 performing the work described in s. 66.0903 (4), ~~66.0904 (3)~~, or 103.49 (2m) on a  
20 project.

21 **SECTION 37.** 103.503 (1) (c) of the statutes, as affected by 2009 Wisconsin Act  
22 28, is amended to read:

23 **103.503 (1) (c)** “Contracting agency” means a local governmental unit, as  
24 defined in s. 66.0903 (1) (d), or a state agency, as defined in s. 103.49 (1) (f), ~~or an~~

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1 ~~owner or developer under s. 66.0904~~ that has contracted for the performance of work  
2 on a project.

3 **SECTION 38.** 103.503 (1) (e) of the statutes, as affected by 2009 Wisconsin Act  
4 28, is amended to read:

5 103.503 (1) (e) "Employee" means a laborer, worker, mechanic, or truck driver  
6 who performs the work described in s. 66.0903 (4), ~~66.0904 (3)~~, or 103.49 (2m) on a  
7 project.

8 **SECTION 39.** 103.503 (1) (g) of the statutes, as affected by 2009 Wisconsin Act  
9 28, is amended to read:

10 103.503 (1) (g) "Project" mean a project of public works that is subject to s.  
11 66.0903 or 103.49 ~~or a publicly funded private construction project that is subject to~~  
12 ~~s. 66.0904.~~

13 **SECTION 40.** 103.503 (2) of the statutes, as affected by 2009 Wisconsin Act 28,  
14 is amended to read:

15 103.503 (2) SUBSTANCE ABUSE PROHIBITED. No employee may use, possess,  
16 attempt to possess, distribute, deliver, or be under the influence of a drug, or use or  
17 be under the influence of alcohol, while performing the work described in s. 66.0903  
18 (4), ~~66.0904 (3)~~, or 103.49 (2m) on a project. An employee is considered to be under  
19 the influence of alcohol for purposes of this subsection if he or she has an alcohol  
20 concentration that is equal to or greater than the amount specified in s. 885.235 (1g)  
21 (d).

22 **SECTION 41.** 103.503 (3) (a) 2. of the statutes, as affected by 2009 Wisconsin Act  
23 28, is amended to read:

24 103.503 (3) (a) 2. A requirement that employees performing the work described  
25 in s. 66.0903 (4), ~~66.0904 (3)~~, or 103.49 (2m) on a project submit to random,

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1 reasonable suspicion, and post-accident drug and alcohol testing and to drug and  
2 alcohol testing before commencing work on a project, except that testing of an  
3 employee before commencing work on a project is not required if the employee has  
4 been participating in a random testing program during the 90 days preceding the  
5 date on which the employee commenced work on the project.

6 **SECTION 42.** 104.001 (3) (am) of the statutes, as created by 2009 Wisconsin Act  
7 28, is repealed.

8 **SECTION 43.** 109.09 (1) of the statutes, as affected by 2009 Wisconsin Act 28,  
9 is amended to read:

10 109.09 (1) The department shall investigate and attempt equitably to adjust  
11 controversies between employers and employees as to alleged wage claims. The  
12 department may receive and investigate any wage claim which is filed with the  
13 department, or received by the department under s. 109.10 (4), no later than 2 years  
14 after the date the wages are due. The department may, after receiving a wage claim,  
15 investigate any wages due from the employer against whom the claim is filed to any  
16 employee during the period commencing 2 years before the date the claim is filed.  
17 The department shall enforce this chapter and ss. 66.0903, ~~66.0904~~, 103.02, 103.49,  
18 103.82, 104.12, and 229.8275. In pursuance of this duty, the department may sue the  
19 employer on behalf of the employee to collect any wage claim or wage deficiency and  
20 ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions  
21 under s. 109.10, the department may refer such an action to the district attorney of  
22 the county in which the violation occurs for prosecution and collection and the  
23 district attorney shall commence an action in the circuit court having appropriate  
24 jurisdiction. Any number of wage claims or wage deficiencies against the same  
25 employer may be joined in a single proceeding, but the court may order separate

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1 trials or hearings. In actions that are referred to a district attorney under this  
2 subsection, any taxable costs recovered by the district attorney shall be paid into the  
3 general fund of the county in which the violation occurs and used by that county to  
4 meet its financial responsibility under s. 978.13 (2) (b) for the operation of the office  
5 of the district attorney who prosecuted the action.

6 **SECTION 44.** 111.322 (2m) (c) of the statutes, as affected by 2009 Wisconsin Act  
7 28, is amended to read:

8 111.322 (2m) (c) The individual files a complaint or attempts to enforce a right  
9 under s. 66.0903, ~~66.0904~~, 103.49, or 229.8275 or testifies or assists in any action or  
10 proceeding under s. 66.0903, ~~66.0904~~, 103.49, or 229.8275.

11 **SECTION 45.** 227.01 (13) (t) of the statutes, as affected by 2009 Wisconsin Act  
12 28, is amended to read:

13 227.01 (13) (t) Ascertains and determines prevailing wage rates under ss.  
14 66.0903, ~~66.0904~~, 103.49, 103.50, and 229.8275, except that any action or inaction  
15 which ascertains and determines prevailing wage rates under ss. 66.0903, ~~66.0904~~,  
16 103.49, 103.50, and 229.8275 is subject to judicial review under s. 227.40.

17 **SECTION 46.** 946.15 (title) of the statutes, as affected by 2009 Wisconsin Act 28,  
18 is amended to read:

19 **946.15 (title) Public and publicly funded construction contracts at less**  
20 **than full rate.**

21 **SECTION 47.** 946.15 (1) of the statutes, as affected by 2009 Wisconsin Act 28,  
22 is amended to read:

23 946.15 (1) Any employer, or any agent or employee of an employer, who induces  
24 any person who seeks to be or is employed pursuant to a public contract as defined  
25 in s. 66.0901 (1) (c) or who seeks to be or is employed on a project on which a prevailing

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1 wage rate determination has been issued by the department of workforce  
2 development under s. 66.0903 (3), ~~66.0904 (4)~~, 103.49 (3), 103.50 (3), or 229.8275 (3)  
3 or by a local governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6)  
4 ~~or 66.0904 (6)~~ to give up, waive, or return any part of the compensation to which that  
5 person is entitled under his or her contract of employment or under the prevailing  
6 wage rate determination issued by the department or local governmental unit, or  
7 who reduces the hourly basic rate of pay normally paid to an employee for work on  
8 a project on which a prevailing wage rate determination has not been issued under  
9 s. 66.0903 (3) or (6), ~~66.0904 (4) or (6)~~, 103.49 (3), 103.50 (3), or 229.8275 (3) during  
10 a week in which the employee works both on a project on which a prevailing wage  
11 rate determination has been issued and on a project on which a prevailing wage rate  
12 determination has not been issued, is guilty of a Class I felony.

13 **SECTION 48.** 946.15 (2) of the statutes, as affected by 2009 Wisconsin Act 28,  
14 is amended to read:

15 946.15 (2) Any person employed pursuant to a public contract as defined in s.  
16 66.0901 (1) (c) or employed on a project on which a prevailing wage rate  
17 determination has been issued by the department of workforce development under  
18 s. 66.0903 (3), ~~66.0904 (4)~~, 103.49 (3), 103.50 (3), or 229.8275 (3) or by a local  
19 governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) ~~or 66.0904~~  
20 ~~(6)~~ who gives up, waives, or returns to the employer or agent of the employer any part  
21 of the compensation to which the employee is entitled under his or her contract of  
22 employment or under the prevailing wage determination issued by the department  
23 or local governmental unit, or who gives up any part of the compensation to which  
24 he or she is normally entitled for work on a project on which a prevailing wage rate  
25 determination has not been issued under s. 66.0903 (3) or (6), ~~66.0904 (4) or (6)~~,

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1 103.49 (3), 103.50 (3), or 229.8275 (3) during a week in which the person works  
2 part-time on a project on which a prevailing wage rate determination has been  
3 issued and part-time on a project on which a prevailing wage rate determination has  
4 not been issued, is guilty of a Class C misdemeanor.

5 **SECTION 49.** 946.15 (3) of the statutes, as affected by 2009 Wisconsin Act 28,  
6 is amended to read:

7 946.15 (3) Any employer or labor organization, or any agent or employee of an  
8 employer or labor organization, who induces any person who seeks to be or is  
9 employed on a project on which a prevailing wage rate determination has been issued  
10 by the department of workforce development under s. 66.0903 (3), ~~66.0904 (4)~~, 103.49  
11 (3), 103.50 (3), or 229.8275 (3) or by a local governmental unit, as defined in s. 66.0903  
12 (1) (d), under s. 66.0903 (6) ~~or 66.0904 (6)~~ to permit any part of the wages to which  
13 that person is entitled under the prevailing wage rate determination issued by the  
14 department or local governmental unit to be deducted from the person's pay is guilty  
15 of a Class I felony, unless the deduction would be permitted under 29 CFR 3.5 or 3.6  
16 from a person who is working on a project that is subject to 40 USC 3142.

17 **SECTION 50.** 946.15 (4) of the statutes, as affected by 2009 Wisconsin Act 28,  
18 is amended to read:

19 946.15 (4) Any person employed on a project on which a prevailing wage rate  
20 determination has been issued by the department of workforce development under  
21 s. 66.0903 (3), ~~66.0904 (4)~~, 103.49 (3), 103.50 (3), or 229.8275 (3) or by a local  
22 governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) ~~or 66.0904~~  
23 ~~(6)~~ who permits any part of the wages to which that person is entitled under the  
24 prevailing wage rate determination issued by the department or local governmental  
25 unit to be deducted from his or her pay is guilty of a Class C misdemeanor, unless the

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1 deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is working  
2 on a project that is subject to 40 USC 3142.

**SECTION 51. Nonstatutory provisions.**

4 (1) PREVAILING WAGE APPLICABILITY; LEGISLATIVE INTENT. The treatment of  
5 sections 66.0903 (1) (dr) and (im), (2), (3) (am) and (dm), and (5) (b) and (c) and 103.49  
6 (1) (bj) and (fm), (1m), (2), and (3g) (b) and (c) of the statutes by this act is intended  
7 to restate, clarify, and affirm the intent, interpretation, and enforcement of section  
8 66.0903 of the statutes, as affected by 2009 Wisconsin Act 28, and section 103.49 of  
9 the statutes, as affected by 2009 Wisconsin Act 28, with respect to the types of  
10 projects of public works described in those provisions. No expansion, contraction, or  
11 other change in that intent, interpretation, or enforcement is intended by the  
12 treatment of those provisions.

**SECTION 52. Initial applicability.**

14 (1) PREVAILING WAGES AND HOURS ON PUBLICLY FUNDED PRIVATE PROJECTS. The  
15 treatment of sections 19.36 (12), 66.0903 (3) (av), 66.0904, 103.49 (3) (ar), 103.50  
16 (4m), 103.503 (title), (1) (a), (c), (e), and (g), (2), and (3) (a) 2., 104.001 (3) (am), 109.09  
17 (1), 111.322 (2m) (c), 227.01 (13) (t), and 946.15 (title), (1), (2), (3), and (4) of the  
18 statutes first applies to a project proposal, including a preliminary plat or final plat  
19 under chapter 236 of the statutes, for a publicly funded private construction project,  
20 as defined in section 66.0904 (1) (i) of the statutes, as created by 2009 Wisconsin Act  
21 28, submitted to a local governmental unit for approval on the effective date of this  
22 subsection.

23 (2) INSPECTION OF PAYROLL RECORDS. The treatment of sections 66.0903 (10) (c)  
24 and 103.49 (5) (c) of the statutes first applies to requests for the inspection of payroll  
25 records made on the effective date of this subsection.

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(3) PREVAILING WAGE RECORDS. The treatment of sections 66.0903 (10) (am) and 103.49 (5) (am) of the statutes first applies to work performed on the effective date of this subsection, except that, if that work is performed under a contract that contains provisions that are inconsistent with those sections, the treatment of those sections first applies to work performed on the day on which that contract expires or is extended, modified, or renewed.

(4) PREVAILING WAGE; REMEDIES. The treatment of sections 66.0903 (11) (a) 1., 2., 3., and 5. and 103.49 (6m) (ag) of the statutes first applies to hours worked on the effective date of this subsection.

(END)



**Parisi, Lori**

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**From:** Ottman, Tad

**Sent:** Wednesday, April 14, 2010 3:56 PM

**To:** LRB.Legal

**Subject:** Draft Review: LRB 09-4681/1 Topic: Prevailing wage; restoration of prior law

Please Jacket LRB 09-4681/1 for the SENATE.

04/14/2010